
(2014) 08 KL CK 0040
In the High Court Of Kerala
Case No : Crl. MC. No. 3099 of 2014

Veeran

APPELLANT

Vs

The Sub Inspector of Police

RESPONDENT

Date of Decision : 21-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2014) 08 KL CK 0040

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : Madhu Radhakrishnan and M.D. Joseph, Advocate for the Appellant;
P. Maya, public prosecutor, Advocate for the Respondent

Judgement

K. Ramakrishnan, J.—This Criminal Miscellaneous Case is filed by the petitioner seeking intervention of this Court to give direction to the 1st respondent under Section 482 of the Code of Criminal Procedure.

2. It is alleged in the petition that the petitioner is in possession of 25 cents of land in resurvey No. 462/17 of Vadakkethara village in Thalappilly taluk, Thrissur district. There were 62 yielding rubber trees in the said land. The said land was in occupation of the petitioner as per the proceedings of the District Collector bearing No. 12458/76. The petitioner has filed a writ petition and obtained favourable orders and the matter is pending before the government in connection with the formal assignment of the land. On 30.3.2014 respondents 2 to 4 trespassed into the property of the petitioner and cut the rubber trees and the 3rd respondent took away the wooden logs in a mini lorry bearing No. KL.48 C 1596. On account of the theft of the rubber trees by the respondents, the petitioner suffered a loss of Rs. One lakh. Immediately the petitioner filed Annexure A1 complaint before the 1st respondent for taking criminal action against the theft and for registering a case. But the 1st respondent neither registered any case nor did he give the receipt for the complaint. Again a request was made to register the complaint by sending Annexure-A2 reminder. In spite of

that no action was taken. So the petitioner has no other remedy except to approach this Court seeking the following relief:

For the above stated grounds and the other grounds urged at the time of hearing in the interest of justice, this Hon'ble court may be pleased to direct the 1st respondent to register a crime and make necessary investigation on Annexure-A1 complaint.

3. Considering the nature of relief claimed in the petition, this court felt that a statement can be called for regarding the allegations made and the first respondent has filed a statement which reads as follows:

"I C.V. Suresh Kumar, Sub Inspector of Police, Pazhayannur Police station do solemnly affirm the following facts.

The petitioner, Sri. Veeran, had been lodged a petition in Pazhayannur Police Station on 31.3.2014. The gist of complaint was that somebody was cut the rubber trees in his own land in Vadakkethara village. I enquired the matter properly. According to the petitioner, he got one more acres of Govt. surplus land in Vadakkethara village, Pazhayannur during the year 1976. The allotted land is lying in 4 more places. More than 95 acres of land were distributed the order come into force during that year. Actually the places were measured and distributed to the persons after 8 more years. During that period nobody were willing to reside at that place and hence the property were encroached by others. Now no boundary mark to most of the property. As such a civil case is on going in the Hon'ble Sub Court at Thrissur O.S. No. 1854/12.

The counter petitioner Reji Mathai, 49 years, S/o. Mathai, Paraplakkal House, Cheerakuzhy Vadakkethara, Pazhayannur says that he got the place by ancestral, that his father brought the place from one Leela, w/o. One Bhaskaran Asari, 35 years back. He planted rubber trees during the year 1989 and the same were replanted during this year. His property boundaries were earmarked and have fencing. As such land tax has remitted upto the year 1994 in the name of Leela. After resurveying the land by the revenue authorities, a dispute was arisen on the matter of survey nos. in that area. Now the matter is pending before the Dist. Collector, Thrissur, the Tahasildar, Talappily and in the Survey Department.

Hence, I the Sub Inspector of Police, Pazhayannur conclude the report that a civil case is existing in the Sub Court at Thrissur and this is purely a civil matter. On the basis I advised the petitioner to act as the order given from the court."

4. Considering the nature of relief claimed, this Court felt that the petition can be disposed of at the admission stage after hearing the counsel for the petitioner and the learned Public Prosecutor appearing for the 1st respondent dispensing with notice to respondents 2 to 4.

5. Counsel for the petitioner submitted that in view of the decision of the Supreme Court in Lalithakumari v. Government of U.P. & Others reported in (ILR 2013(4) Kerala 633), when a cognizable offence is made out in a complaint,

police are bound to register crime and if they are not registering any crime, then that will have to be informed to him by giving a reply within a week of the filing of the complaint. But in this case that was not done. Even now, though in the statement they have stated that the matter relating to civil nature and so they did not register any crime, they did not inform the same to the petitioner.

5. The learned Public Prosecutor appearing for the 1st respondent submitted that there is a civil dispute pending between the parties in respect of the property which is of the year 2012 and so they have come to a conclusion that it is a civil dispute and the matter will have to be considered by the civil court.

6. It is alleged in the petition that the petitioner claims to be in possession of 25 cents of land which is a government land. According to the petitioner, it was assigned in his favour as per proceedings No. 12458/76 of the District Collector and the formal procedure of making assignment is pending with the Government on the basis of the recommendations given by the District Collector. He is in possession and enjoyment of the property and there were 62 yielding rubber trees in the said land. According to him, on 30.3.2014 respondents 2 to 4 trespassed into the property and cut and removed the rubber trees and thereby, according to him, they have committed the criminal trespass and theft. He had filed Annexure-A1 complaint and also sent Annexure-A2 reminder, when they did not act on Annexure-A1. In the light of the decision reported in Lalithakumari's case (cited supra), if the police are not registering any crime, if a cognizable offence is made out in the complaint filed by the petitioner, it has been observed that if a cognizable offence is made, then the respondent police will have to register a crime and after investigation, if they found that there is no offence made out, they can refer the same. Then the parties are left with the remedy of filing complaint or objection to the refer report as permitted under the Code. It is also mentioned in the same decision that, if the police have not intending to take any action on the complaint filed and after conducting enquiry, if they have doubt regarding the transaction or there was long delay in informing the result of the enquiry and no reason for not registering the crime on the basis of the complaint filed, within one week from the date of receipt of such complaint, they have to inform the party regarding the action taken. But quite unfortunately in spite of the direction by the Supreme Court, it is not being followed by the police official in the letter and spirit of the Supreme Court, which they are bound to follow as it is the law declared of the land by virtue of the provisions of the Constitution of India. In this case they have filed a statement before this Court stating that on enquiry they found that there is a suit as O.S. No. 1854/12 is pending between the same parties before the Sub Court, Thrissur and there is a boundary dispute and without resolving that dispute according to them it cannot be proceeded with as it is a case of civil nature. Since they have not registered any crime and intend to file any refer report before the court below, the remedy of the petitioner is only to treat the statement filed by the investigating officer as notice on the complaint filed and stated the reason for not registering the crime and file a private complaint before the concerned Magistrate court to redress his

grievance.

With the above directions and observations, this petition is disposed of.